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Washington, D.C. 20231

MAY 12 1998

W. Scott McNees  
Cytogen Corporation  
600 College Road East  
Princeton, NJ 08540

Re: Patent Term Extension  
Application for  
U.S. Patent No. 5,162,504

## NOTICE OF FINAL DETERMINATION

A determination has been made that U.S. Patent No. 5,162,504, which claims the human drug product ProstaScint™ (capromab pendetide), is eligible for patent term extension under 35 U.S.C. § 156. The period of extension has been determined to be 352 days.

A single request for reconsideration of this final determination as to the length of extension of the term of the patent may be made if filed within one month of the date of this notice. Extensions of time under 37 CFR § 1.136(a) are not applicable to this time period. In the absence of such request for reconsideration, the Commissioner will issue a certificate of extension, under seal, for a period of 352 days.

The period of extension has been calculated using the Food and Drug Administration determination of the length of the regulatory review period published in the Federal Register of July 21, 1997 (62 Fed. Reg. 39002). Under 35 U.S.C. § 156(c):

$$\begin{aligned}\text{Period of Extension} &= \frac{1}{2} (\text{Testing Phase}) + \text{Approval Phase} \\ &= \frac{1}{2} (1,906 - 1,111) + 655 \\ &= 1,053 \text{ days}\end{aligned}$$

Since the regulatory review period began October 26, 1989, before the patent issued (November 10, 1992), only that portion of the regulatory review period occurring after the date the patent issued has been considered in the above determination of the length of the extension period 35 U.S.C. § 156(c). (From October 26, 1989 to November 10, 1992 is 1,111 days; this period is subtracted from the number of days occurring in the testing phase according to the FDA determination of the length of the regulatory review period.) No determination of a lack of due diligence under 35 U.S.C. § 156(c)(1) was made.

However, the 14 year exception of 35 U.S.C. § 156(c)(3) operates to limit the term of the extension in the present situation because it provides that the period remaining in the term of the patent measured from the date of approval of the approved product plus any patent term extension cannot exceed fourteen years. The period of extension calculated above, 1,053 days, would extend the patent from November 10, 2009 (35 U.S.C. § 154) to September 28, 2012, which is beyond the 14-year limit (the approval date is October 28, 1996, thus the 14 year limit is October 28, 2010). The period of extension is thus limited to October 28, 2010, by operation of 35 U.S.C. § 156(c)(3). Accordingly, the period of extension is the number of days to extend the term of the patent from its original expiration date, November 10, 2009, to and including

October 28, 2010, or 352 days.

The limitations of 35 U.S.C. § 156(g)(6) do not operate to further reduce the period of extension determined above.

Upon issuance of the certificate of extension, the following information will be published in the Official Gazette:

U.S. Patent No.:	5,162,504
Granted:	November 10, 1992
Original Expiration Date <sup>1</sup> :	November 10, 2009
Applicant:	Julius S. Horoszewicz
Owner of Record:	Cytogen Corporation
Title:	Monoclonal Antibodies to a New Antigenic Marker in Epithelial Prostatic Cells and Serum of Prostatic Cancer Patients
Classification:	530/388.2
Product Trade Name:	ProstaScint™ (capromab pendetide)
Term Extended:	352 days
Expiration Date of Extension:	September 28, 2012

Any correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents  
Box Patent Ext.  
Washington, D.C. 20231


By FAX: (703) 308-6916  
Attn: Special Program Law Office

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<sup>1</sup>Subject to the provisions of 35 U.S.C. § 41(b).

By hand: One Crystal Park, Suite 520  
2011 Crystal Drive  
Arlington, VA

Telephone inquiries related to this determination should be directed to the undersigned at (703) 306-3159.

  
Karin L. Tyson  
Senior Legal Advisor  
Special Program Law Office  
Office of the Deputy Assistant Commissioner  
for Patent Policy and Projects

cc: Ronald L. Wilson, Director  
Health Assessment Policy Staff  
Office of Health Affairs (HFY-20)  
Food and Drug Administration  
5600 Fishers Lane, Room 15-22  
Rockville, MD 20857

RE: ProstaScint™ (capromab pendetide)  
FDA Docket No.: 97E-0107